

CONFORMING COPY

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Attorneys for Plaintiff,
Blumenthal Distributing, Inc.
dba Office Star Products

FILED
2008 DEC -2 PM 1:35
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BLUMENTHAL DISTRIBUTING,
INC.
dba OFFICE STAR PRODUCTS,

Plaintiff,

vs.

NORSTAR PRODUCTS, INC. dba
BOSS OFFICE PRODUCTS and
OFFICE FURNITURE OUTLET,
INC.,

Defendants.

Case No. EDCV08-1757

COMPLAINT FOR:

1. INFRINGEMENT OF AN UNREGISTERED TRADEMARK;
2. FALSE ADVERTISING;
3. COMMON LAW UNFAIR COMPETITION

JURY DEMAND

I. JURISDICTION.

1. This is an action for infringement of an unregistered trademark pursuant to 15 U.S.C. § 1125(a); false advertising and false representation of fact pursuant to 15 U.S.C. § 1125(a) and California Business & Professions Code § 12024.6; and unfair competition under the common law of California. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1267(a).

2. Venue is proper under 28 U.S.C. § 1391(b) and (c) in that Defendants are corporations which are subject to personal jurisdiction in this judicial district.

1 **II. PARTIES.**

2 3. Plaintiff Blumenthal Distributing, Inc. which does business under the
3 trade name Office Star Products ("Office Star") is a corporation organized and
4 existing under the laws of the State of California having a principal place of
5 business at 1901 S. Archibald Avenue, Ontario, California 91761.

6 4. On information and belief, Defendant Norstar Office Products, Inc.
7 which does business under the trade name Boss Office Products ("Boss") is a
8 corporation organized under the laws of the State of California, having a principal
9 place of business at 5353 Jillson Street, Commerce, California 90040.

10 5. On information and belief, Defendant Office Furniture Outlet, Inc.
11 ("OFO") is a corporation organized and existing under the laws of California
12 having a principal place of business at 8840 Miramar Road, Building C, San
13 Diego, California 92126 and which does business within this judicial district.

14 **III. FACTUAL BACKGROUND.**

15 6. Plaintiff has used the marks 5500 and 5700 for office chairs since
16 June 2004.

17 7. Plaintiff has extensively promoted its 5500 and 5700 office chairs
18 nationwide in advertising and on its internet web site with the result that these
19 marks have acquired a secondary meaning as an identification of the source of the
20 chairs.

21 8. Plaintiff has been careful, skillful and diligent in the conduct of its
22 business and has maintained uniform standards of high quality in its goods. As a
23 result of these efforts, Plaintiff's 5500 and 5700 trademarks have acquired a
24 public acceptance and reputation, thereby creating a goodwill which inures to
25 Plaintiff's benefit.

26 9. On March 18, 2008 Office Star sued Boss for infringement of a
27 design patent, which design was embodied in Office Star's 5500 and 5700 chairs.
28 The accused chairs in that litigation were offered by Boss under the trademarks

1 B5500 and B5700. In settlement of that litigation, Boss agreed, *inter alia*, to stop
2 selling the chair design in the United States that was embodied in the B5500 and
3 B5700 chairs offered by Boss.

4 10. The foregoing settlement agreement notwithstanding and with full
5 knowledge of Plaintiff's business and Plaintiff's rights in the trademarks 5500 and
6 5700 and the public recognition thereof, Defendants have offered and/or offer
7 office chairs for sale nationwide, including in this judicial district, which are
8 competitive with Plaintiff's goods, which chairs are identified by the designations
9 B5500 or B5700.

10 11. Defendant OFO displays an office chair on its web site designated
11 the "Boss Task Contoured Mesh Back Chair," which chair had previously been
12 designated as the B5500 by Defendant Boss, and which Boss had agreed to cease
13 selling. Upon ordering the referenced chair shown on OFO's web site, Boss
14 fulfils the order by shipping a different chair.

15 12. Boss uses the trademarks B5500 and B5700 on its web site as links
16 to another Boss chair, Boss's B6808 chair.

17 **FIRST CLAIM FOR RELIEF**

18 **(Infringement of An Unregistered Trademark)**

19 13. Plaintiff repeats and realleges paragraphs 1 through 12 hereinabove.

20 14. Plaintiff's trademarks 5500 and 5700 have acquired distinctiveness
21 as a result of their use by Plaintiff.

22 15. Defendants' use of Plaintiff's unregistered trademarks is likely to
23 cause confusion that Defendants' goods are sponsored or authorized by or
24 affiliated with Plaintiff.

25 16. The above-described acts of Defendant constitute infringement of an
26 unregistered trademark and a false designation of origin in violation of 15 U.S.C.
27 § 1125(a) in that Defendants have used in connection with their goods a
28 trademark which is likely to cause confusion or mistake or to deceive that

1 Defendants' goods are authorized or sponsored by, or are affiliated with Plaintiff
2 and has caused such goods to enter into commerce which may be regulated by
3 Congress.

4 17. Plaintiff is being damaged and is likely to be damaged in the future
5 by Defendants' infringement by reason of the likelihood that prospective
6 purchasers and purchasers of Defendants' goods will be confused as to the source,
7 sponsorship, or affiliation of Defendants' goods.

8 18. Defendants have unfairly profited from the actions alleged herein
9 and will continue to be unjustly enriched unless and until such conduct is
10 enjoined.

11 19. By reason of Defendants' acts alleged herein, Plaintiff has and will
12 continue to suffer damage to its business goodwill.

13 20. By reason of Defendants' acts alleged herein, Plaintiff has suffered
14 and will suffer irreparable harm unless and until Defendants' conduct is enjoined.

15 21. Defendants' acts alleged herein were willful and taken in conscious
16 disregard of Plaintiff's rights.

17 **SECOND CLAIM FOR RELIEF**

18 **(False Advertising)**

19 22. Plaintiff repeats and realleges paragraphs 1 through 20 hereinabove.

20 23. Defendant OFO has displayed on its website and offered for sale an
21 office chair of Defendant Boss which is no longer available and Defendant Boss
22 fills orders for the chair which is no longer available with a different chair.

23 24. Defendants' "bait and switch" offer for sale of a chair which is
24 discontinued with the intent to entice customers into buying a different product
25 constitutes false advertising and a false representation of fact in violation of 15
26 U.S.C. § 1125(a) and California Business & Professions Code § 12024.6.

27 25. Plaintiff is being damaged and is likely to be damaged in the future
28 by Defendants' acts of false advertising and false representation of fact because of

1 the likelihood that potential customers of the products advertised by Defendants
2 will be confused or mistaken as to the source, sponsorship or approval of products
3 actually offered for sale and/or sold by Defendants.

4 26. Defendants have unfairly profited from the actions alleged herein
5 and will continue to be unjustly enriched unless and until such conduct is
6 enjoined.

7 27. By reason of Defendants' acts alleged herein, Plaintiff has suffered
8 and will continue to suffer damage to its goodwill and has and will continue to
9 suffer irreparable harm unless and until Defendants' conduct is enjoined.

10 28. Defendants' acts of false advertising and false representation of fact
11 were willful.

12 **THIRD CLAIM FOR RELIEF**

13 **(For Common Law Unfair Competition)**

14 29. Plaintiff repeats and realleges paragraphs 1 through 28 hereinabove.

15 30. The above-described conduct of Defendants constitutes unfair
16 competition under the common law of the State of California.

17 31. As a result of such actions, Plaintiff has been damaged in an amount
18 to be proven at trial.

19 32. Because Defendants' oppressive and vexatious conduct has been
20 intentional, willful, and in reckless disregard of Plaintiff's rights, Plaintiff is
21 entitled to punitive damages against Defendants.

22 **REQUEST FOR RELIEF**

23 WHEREFORE, Plaintiff prays for relief as follows:

24 1. That this Court declare that the trademarks 5500 and 5700 are valid
25 and are owned by Plaintiff.

26 2. That this Court declare that Defendants have infringed Plaintiff's
27 trademark rights and have committed acts of unfair competition by their
28 unauthorized use of the trademarks 5500 and 5700 and by their offer for sale or

1 promotion of an office chair which is intended to entice a consumer into a
2 transaction different from that originally requested.

3 3. That Defendants, their agents, employees, and representatives and all
4 persons acting in concert or in privity with any of them be permanently enjoined
5 from: a) using the trademarks 5500 and 5700 alone or in combination with other
6 words, symbols, or designs in any advertising, web site, or for any other purpose;
7 and b) from bait and switch tactics;

8 4. That Plaintiff be awarded the greater of its damages or Defendants'
9 profits resulting from its willful infringement of Plaintiff's trademark rights and
10 willful false and deceptive advertising;

11 5. That damages resulting from Defendants' willful trademark
12 infringement and false and deceptive advertising be trebled in accordance with
13 the provisions of 15 U.S.C. § 1117;


14 6. That Plaintiff be awarded punitive damages against both Defendants
15 under the common law of California;

16 7. That Plaintiff be awarded its attorney's fees, expenses and costs
17 incurred in connection with this case; and

18 8. That Plaintiff be awarded such other relief as may be appropriate.

19
20 Respectfully submitted,
21 CHRISTIE, PARKER & HALE, LLP

22
23 DATED: December 1, 2008

24 By 
25 Edward R. Schwartz
26 Attorneys for Plaintiff,
27 Blumenthal Distributing, Inc.
28 dba Office Star Products

BLV PAS825261.1-*11/26/08 2:30 PM

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Stephen G. Larson and the assigned discovery Magistrate Judge is Oswald Parada.

The case number on all documents filed with the Court should read as follows:

EDCV08- 1757 SGL (OPx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☒ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Edward R. Schwartz
 Christie, Parker & Hale, LLP
 350 W. Colorado Blvd.
 P. O. Box 7068
 Pasadena, CA 91109-7068
 626-795-9900

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

Blumenthal Distributing, Inc. dba
 Office Star Products

Plaintiff(s)

v.

Norstar Products, Inc. dba Boss Office
 Products and Office Furniture Outlet

Defendant(s)

CASE NUMBER:

EDCV08-1757 SGL (OPx)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney

Edward R. Schwartz, whose address is:

Christie, Parker & Hale, LLP
 350 W. Colorado Blvd., Suite 500
 Pasadena, California 91105
 626-795-9900

an answer to the ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-
 claim which is herewith served upon you within 20 days after service of this Summons upon you, exclusive
 of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded
 in the complaint.

CLERK, U.S. DISTRICT COURT

Date: **DEC -2 2008**

By: Natalie Hongoria
 Deputy Clerk

(Seal of the Court)

SUMMONS

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**I(a) PLAINTIFFS** (Check box if you are representing yourself ☐)Blumenthal Distributing, Inc. dba Office
Star Products**DEFENDANTS**Norstar Products, Inc. dba Boss Office
Products and Office Furniture Outlet**(b)** County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Attorneys (If Known)

Edward R. Schwartz
Christie, Parker & Hale, LLP
350 W. Colorado Blvd.
P. O. Box 7068
Pasadena, CA 91109-7068
626-795-9900**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of
Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | | | | | |
|--|----------------------------|----------------------------|--|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place
of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place
of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a
Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)**CLASS ACTION under F.R.C.P. 23:** ☐ Yes ☒ No**MONEY DEMANDED IN COMPLAINT: \$** _____**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Trademark Infringement 15 U.S.C. Section 1125(a)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litig.
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input checked="" type="checkbox"/> 840 Trademark
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	SOCIAL SECURITY
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY		<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation		<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure		<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment				FEDERAL TAX SUITS
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number:

EDCV08-1757

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). **RELATED CASES:** Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. **VENUE:** List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

San Bernardino

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).☐ Check here if the U.S. government, its agencies or employees is a named defendant.

Los Angeles

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)**Note:** In land condemnation cases, use the location of the tract of land involved.

Los Angeles

X. **SIGNATURE OF ATTORNEY (OR PRO PER):** Edward R. Schwartz **Date** Dec. 2, 2008

Edward R. Schwartz

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))